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EVALUATION OF THE PROGRAMME OF TECHNICAL COOPERATION ACTIVITIES ON COMPETITION LAW AND POLICY

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EXECUTIVE SUMMARY

The UNCTAD technical cooperation programme on competition law and policy provides training and advice to assist developing countries in formulating and implementing national competition legislation. The attainment of the programme objectives has been facilitated by the favourable perception of UNCTAD by the developing countries; the expertise of the secretariat in both the practical and theoretical aspects; their special knowledge of developing economies in Africa, Latin America and parts of Asia; their knowledge of competition and consumer protection legislation in both developed and developing nations; and the use of foreign experts from both developed and developing countries. In general, the programme has performed well in recent years, in the face of an increasing number of requests for assistance. Most recipient countries contacted during the evaluation stated that the missions had met their expectations. Moreover, the evidence suggests that the national seminars and advisory missions have had a favourable impact on increasing awareness of the importance of competition and on capacity-building, including through the establishment of independent competition authorities in some countries. The recommendations contained in this report are intended to ensure that the programme reflects the changing priorities of the developing countries for the various forms of technical assistance. Training and advice on setting up a competition authority are now among the most sought-after forms of assistance.

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Introduction

1. The UNCTAD technical cooperation programme on competition law and policy provides training and advice to assist developing countries in formulating and enforcing national competition legislation. It is designed to build national capacity in developing countries so that restrictive business practices and the concentration of economic power do not impede economic development or the social welfare of consumers. A further aim is to help representatives of developing countries participate more effectively in multilateral discussions on such issues as a possible international framework for competition policy and the relationship between trade and competition policy.

2. At its thirty-second session, the Working Party on the Medium-term Plan and the Programme Budget "decided that an in-depth evaluation of the competition law and policy Programme be considered at the next session of the Working Party in 1999 dealing with technical cooperation". The evaluation has been conducted by an independent consultant with extensive experience in both the activities of competition authorities and the concerns of end-users. The Programme, Planning and Assessment Unit of UNCTAD was to provide methodological guidance. The terms of reference for the evaluation are reproduced in Annex I.

3. The study was conducted during the period March to June 1999. In order to assess the performance of the technical cooperation activities provided by UNCTAD, face-to-face interviews were arranged with government officials and senior members of the competition authorities in both developed and developing countries. Opinions were also sought from officers in international organizations with an interest or involvement in competition law and policy. In addition, discussions were held with UNCTAD staff and with a number of missions based in Geneva. A list of the persons or organizations consulted may be found in Annex II.

4. To supplement the information obtained through the interviews, questionnaires were sent to all the countries which are members of UNCTAD. One questionnaire was designed for officials of developed countries with some knowledge of UNCTAD's technical cooperation activities in this area. Another was directed to officials in developing countries which were actual or potential beneficiaries of the technical assistance. Copies of both questionnaires and a summary of the responses may be found in Annex III.

5. The evaluation also took account of the published papers prepared by the UNCTAD secretariat. These included the reviews of technical assistance activities submitted to the annual meetings of the Intergovernmental Group of Experts on Competition Law and Policy; analytical studies dealing with economic aspects of restrictive business practices; practical information papers outlining the basic features of restrictive business practices; commentaries on a possible model law

on restrictive business practices; and the reports of regional seminars organized by UNCTAD. The written contributions on competition policy prepared by UNCTAD for inclusion in UNCTAD's *World Investment Reports* were also examined.

6. Finally, in conducting this evaluation, the independent consultant was able to draw on his personal experience of UNCTAD technical cooperation activities in two respects: as an invited speaker at a few of the national or regional seminars on competition law and policy organized by UNCTAD; and as a consultant recently involved in the process of drafting or commenting on the competition or consumer protection laws in several developing countries.

I. BACKGROUND AND OVERVIEW OF THE PROGRAMME

A. "The Set"

7. In December 1980, the General Assembly of the United Nations adopted a voluntary code of conduct on competition: the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices ("the Set"). In the Set it was envisaged that UNCTAD and other relevant organizations of the United Nations system, in conjunction with UNCTAD, would implement or facilitate technical assistance, advisory and training programmes on restrictive business practices, particularly for developing countries

8. The detailed provisions of the Set indicated that, *inter alia,* experts should be made available to assist developing countries, at their request, in formulating or improving restrictive business practices legislation. Seminars, courses and training programmes should be held, primarily in developing countries, to train officials likely to be involved in administering such legislation.

9. The Set also proposed that arrangements be made to allow the exchange of personnel between restrictive business practice authorities. Documents and other information about restrictive business practices should be collected and disseminated, particularly among developing countries, and a handbook on restrictive business practices legislation compiled.

10. Further provisions of the Set were that international conferences on restrictive business practices legislation and policy should be arranged, as should seminars on such topics, to allow an exchange of views among persons in the public and private sectors.

11. In the period of almost 19 years since the Set was first adopted by the General Assembly, UNCTAD has pursued each of the activities just described. In doing so, it has also taken account of the resolutions passed at subsequent United Nations conferences in 1985, 1990 and 1995 which reviewed all aspects of the Set.

12. The work programme of the UNCTAD secretariat has been monitored regularly by an Intergovernmental Group of Experts, which was established as part of the Set and has met every year since 1981. The Group was originally named the Intergovernmental Group of Experts on Restrictive Business Practices but was renamed the Intergovernmental Group of Experts on Competition Law and Policy in 1997.

B. Current technical cooperation activities in the field of competition law and policy

13. The current UNCTAD work programme in this area reflects the requests received, the needs of the countries concerned and the resources available. In the past three or four years, in particular, the requests for technical assistance from developing countries and countries in transition, have increased substantially - outstripping the growth in available resources and leaving a backlog of requests which could not be met, at least for some time.

14. One reason for the increasing number of requests is that more developing countries are planning to introduce competition/consumer protection legislation for the first time, while many others, with such legislation already in place, still require assistance to ensure that the law is properly enforced. In many ways the effective implementation of the law is more demanding of resources than the initial drafting of the legislation. The former necessitates the training of investigators; the establishment of a suitably structured competition authority; seminars and workshops for its members and for the judiciary; and the preparation of practical guidelines for business on conduct and agreements that could be at risk of transgressing the law.

15. According to the latest progress report on UNCTAD technical cooperation presented to the Intergovernmental Group of Experts in June 1999, the main types of technical cooperation activities carried out by the secretariat are:

(a) The provision of information on restrictive business practices, their existence and possible adverse effects on the economy;

(b) Introductory seminars directed at a wide audience, including government officials and academics, as well as business and consumer-oriented circles;

(c) Assistance to States in drafting competition legislation;

(d) Advisory services for the setting-up of a competition authority, including the training of relevant personnel;

(e) Organization of seminars in which States that already have competition legislation can consult one another on specific cases and exchange information; and

(f) Assistance to States seeking expert advice from other competition authorities in order to amend their competition laws in the most effective manner.

16. To gain a quantitative impression of the technical assistance provided by UNCTAD, it is useful to classify these activities into four broad categories, namely, national seminars, national advisory missions, regional and subregional seminars, and international conferences.

17. In the past five years, (i.e., 1994 to 1998 inclusive) national seminars were conducted by UNCTAD in 22 developing countries or countries in transition. As two national seminars or symposiums were held during this period in both Malaysia and Malawi, a total of 24 national seminars were involved altogether. These seminars had a wide geographical spread, including countries in Africa, Asia, and Latin America and the Caribbean.

18. Fifteen national advisory missions were undertaken during the same period, with about half of these representing a follow-up to an earlier national seminar in the same country. These figures relate only to overseas missions involving UNCTAD secretariat members and/or foreign experts. They do not include the significant number of instances where the secretariat in Geneva has been asked by government officials in a developing country to provide brief oral or written comments on the country's draft competition legislation.

19. Overall, some 30 developing countries benefited from a national seminar or an advisory mission from UNCTAD during the five-year period. Foreign experts were involved in the great majority of these missions, either as speakers at the seminars or as consultants on the drafting or implementation of competition laws. These experts came from 14 different countries with experience in competition law and policy. Some were from developing countries.

20. UNCTAD was also the organizer or joint organizer of 11 regional and subregional seminars and workshops on competition and consumer protection between 1994 and 1998. Of these, five were held in African countries, while others were held for Arab countries, for countries in the South Pacific Forum, as well as for nations in the Caribbean, Latin America and parts of Asia. Usually at least six developing countries were represented at each of these seminars and workshops.

21. Members of the UNCTAD secretariat also participate each year in a number of international conferences on restrictive business practices, making substantive presentations or taking part in discussions. Not all of these conferences take place in developing countries, but

they are of indirect benefit to the technical cooperation programme because they enable secretariat members to keep up to date with developments in the economic analysis of restrictive business practices; to exchange views on particular cases with the competition authorities of both developed and developing countries; and to facilitate closer cooperation with other international organisations providing technical assistance on competition law and policy (e.g. the World Bank and the Organization for Economic Cooperation and Development (OECD).

C. Resources and funding

22. Taking into account the number of national seminars and advisory missions undertaken, as well as the number of regional and subregional seminars organized by the secretariat, UNCTAD has been able to carry out a total of 11 or 12 such activities in developing countries in each of the past three years. While the use of foreign experts and cooperation with other organizations, such as the German Foundation for Economic Development, has assisted in the attainment of this level of activity, it is apparent that further increases in activity cannot be expected, given the human and financial resources currently available for this aspect of UNCTAD's work.

23. At present, four persons in the UNCTAD secretariat have some involvement in the technical cooperation programme on competition law and policy. However, they have other responsibilities as well, including servicing the Intergovernmental Group of Experts on Competition Law and Policy, seeking external finance, organizing travel and employment arrangements for foreign experts, preparing analytical studies and information papers and responding to requests from Governments and competition authorities in developing countries. It is estimated by the Competition Law and Policy and Consumer Protection Section that on average, one quarter of their time is devoted directly to technical assistance, equivalent to the employment of only one full-time person.

24. In practice, of course, it would not be feasible to have one person working full-time on technical assistance. It will always be necessary to have a senior member of staff in Geneva to deal with requests when one or more of his senior colleagues is away on one of the frequent overseas missions.

25. As far as financial resources are concerned, the major contributions come from four sources. In order of importance these are the Netherlands, Norway, Germany and the United Nations Development Programme (UNDP). Increased funding from 1994 onwards enabled greater use to be made of foreign experts and permitted more national and regional seminars to be conducted each year.

II. EVALUATION

A. Appropriateness of the concepts and design

26. When the General Assembly adopted "the Set" in 1980, it stated that the objectives were (in summary):

(a) To ensure that restrictive business practices do not impede or negate the realization of the benefits that should arise from the liberalization of tariff and non-tariff barriers affecting world trade, particularly those affecting the trade and development of developing countries;

(b) To attain greater efficiency in international trade and development, particularly that of developing countries;

(c) To protect and promote social welfare in general, and, in particular the interests of consumers in both developed and developing countries; and

(d) To eliminate the disadvantages to trade and development which may result from the restrictive business practices of transnational corporations (TNCs) or other enterprises.

27. These objectives are at the heart of the technical cooperation activities of UNCTAD in the area of competition law and policy. But there are now added reasons why such activities are necessary and important. Not only has international trade been liberalized through tariff reductions and the elimination of many non-tariff barriers, but flows of foreign direct investment (FDI) to developing countries have increased and more and more Governments have elected to privatize business enterprises that were formerly in public ownership. In the absence of effective competition laws and policies, the potential benefits of freer trade, globalization and privatization are unlikely to be realized in developing countries. This is because, in those circumstances, enterprises with market power, including transnational corporations (TNCs), would often be able to avoid the threat of competition and the consequent pressure to improve their efficiency.

28. Expectations have been built up that less government intervention and greater reliance on market forces will bring benefits to consumers through lower prices, improvements in product quality, and more rapid technological advances. Such benefits cannot be gained if restrictive business practices are pervasive. Moreover, the anticipated advantages of privatization will largely be lost if publicly owned monopolies are replaced by private monopolies, insulated from competition.

29. These considerations clearly indicate that the concept of technical cooperation to assist developing countries and countries in transition to formulate and implement effective competition laws and policies is entirely appropriate, given the objectives of fostering efficient economic development, international trade, and social welfare that are referred to in the Set.

30. The process of technical cooperation can be initiated only after a request for assistance has been received from the Government of a developing country or from its competition authority. UNCTAD has no sanctions that it can apply to ensure that a developing country introduces competition or consumer protection legislation, nor can it insist on measures to implement these laws effectively once they are in place. The situation is rather different for the World Bank or the International Monetary Fund (IMF), for example, where the provision of loans or other financial assistance may sometimes be made contingent on measures to promote competition in the domestic market.

31. The design of the UNCTAD technical cooperation programme has several desirable features, which are generally appreciated by beneficiary countries. First, the national seminars, workshops and advisory missions take place in the individual developing countries, allowing a cross-section of government officials, business executives, academics and lawyers to participate in the discussions. Secondly, over time, the UNCTAD secretariat has been able to build up a network of established experts on restrictive business practices from both developed and developing countries, who can be called upon to present papers or offer advice in support of UNCTAD activities. Thirdly, the quality of the material presented by UNCTAD and the analytical skills that it brings are well regarded by recipient countries. Fourthly, it is recognized that UNCTAD is able to offer practical advice on the implementation of competition laws and not merely theoretical propositions about the likely effects of restrictive business practices.

32. There is no doubt that the receptivity of developing countries to UNCTAD's technical cooperation programme is heightened by their perceptions of the role of the institution as whole. It was apparent from the interviews held in developing countries and from their responses to the questionnaires that UNCTAD is viewed as the multilateral institution most likely to take account of the interests of developing countries and as a source of friendly unbiased advice.

33. However, the design of the technical cooperation programme was the subject of some criticism. A few respondents felt that discussion of actual case studies of restrictive business practices found in developing countries should figure more prominently on the agenda for seminars and workshops. It was also suggested that speakers at the seminars, particularly the foreign experts, should be briefed in advance about such matters as the industrial structure in the country concerned, its institutional framework, and any potential obstacles to the effective implementation

of competition laws. Such a briefing, it was argued, would enable the speakers to present more relevant material and answer questions from the audience more effectively.

34. Other points made by recipient countries were as follows :

(a) The amount of advance notice of forthcoming regional or subregional seminars was sometimes inadequate, apparently because invitations were sent through normal diplomatic channels and not directly to those officials concerned with competition policy, who were the potential participants at the seminars; and

(b) Printed copies of papers presented at seminars (or summaries thereof) were not available in advance and sometimes not at all.

35. Attention to these matters would enhance the benefits of the programme. These additional benefits are likely to outweigh any additional resource costs that may be involved.

36. Some useful pointers to the types of UNCTAD activities on competition law and policy that would best suit the future needs and expectations of beneficiary countries were provided by the questionnaire responses. The training of personnel, including the training of investigative staff in the competition authority and seminars for the competition authority members, was regarded as a matter of high priority by most of the beneficiary countries that replied. Those developing countries that have not yet put competition or consumer protection laws in place were keen to have introductory seminars and general information about the adverse effects of restrictive business practices. For most respondents, the organization of regional or subregional seminars, permitting the exchange of views and information between competition officials of neighbouring countries, was regarded as a matter of lesser priority.

B. Factors impeding or facilitating the attainment of the programme objectives

37. Among the main factors that facilitate the attainment of the programme's objectives are the following: the favourable perception of UNCTAD by the developing countries; the expertise of the secretariat in the theoretical and empirical aspects of restrictive business practices; their special knowledge of developing economies in Africa, Latin America and parts of Asia; their cumulative knowledge and experience of competition and consumer protection legislation in both developed and developing countries; and their previous experience in advising the Governments of developing economies on competition policy.

38. According to those officials from the developing countries that replied to the questionnaire, the technical assistance provided to their countries by UNCTAD in the past had generally met the

objectives established at the time. Moreover, it was clear that follow-up activities by UNCTAD would be welcome. Indeed, a clear majority of the respondents who expressed a preference stated that UNCTAD was their preferred source of advice and assistance on competition laws and policy.

39. However, there are also some factors tending to impede progress in promoting competition in developing economies, even though it could be expected to lead to improvements in efficiency, more rapid economic development and greater social welfare. First, some Governments do not appear to assign high priority to the full implementation of the competition laws. While the competition authorities of most developed countries are generally independent statutory bodies, able to conduct their own investigations and publish their findings, this is not so common in the developing world.

40. Moreover, there is often a dearth of skilled personnel, and in particular of economists, lawyers and accountants able to undertake the tasks of investigating, analysing and prosecuting alleged breaches of the competition law. If and when a case goes before the courts, the judges may lack the necessary knowledge and experience to evaluate the more complex issues that are often involved in such cases.

41. Faced with these impediments, UNCTAD can assist in two principal ways: first by organizing seminars attended by a wide cross-section of the community, in order to stress the potential benefits of competition and consumer protection - in other words, to create the basis for a "competition culture", and secondly, by making arrangements for the training of those who will be involved in implementing the laws. This may be through short-term deployment of local personnel to competition authorities in developed countries, through the establishment of regional training centres (e.g. in Africa) or through the placement of a foreign expert in the developing country for a period of several weeks.

C. Impact of the programme

42. In seeking to assess the impact of UNCTAD's technical cooperation programme, it is useful to begin by noting some possible measures of the impact which should not be used. One is the number of developing countries and countries in transition which have received such assistance from UNCTAD, and the trend in that number over recent years. This is likely to be misleading, because the number of countries that were assisted in any period is not a reflection of the underlying demand but was largely determined by the human and financial resources that UNCTAD had available for this purpose. In any case, this measure has nothing to say about the outcome of providing the assistance, in particular whether it led to a more competitive environment in the recipient countries.

43. An alternative approach might be to ask how many developing countries have introduced laws to prevent restrictive business practices and to what extent that can be attributed to the advice and assistance provided by UNCTAD. A drawback to this approach is that, although the legislation may have been put in place, this will have little real impact on competition unless the law is being implemented effectively.

44 These considerations suggest that the clearest evidence that UNCTAD technical cooperation is having a favourable impact on competition is likely to be found when an adequately funded independent competition authority has been established, at least partly as a result of UNCTAD advice and assistance. Capacity-building of this kind should be a central objective of the technical cooperation programme.

45. At least nine developing countries, in Africa, Latin America, the Caribbean and the Indian subcontinent have established effective competition authorities in recent years, following their participation in UNCTAD seminars or hosting of an UNCTAD advisory mission. It is to be expected that several other countries which are about to introduce competition legislation for the first time (with UNCTAD assistance) will reach this stage over the course of the next few years.

46. Other evidence that the programme is having, or is likely to have, the desired impact on competition in developing countries may also be available. For example, the local business community often indicates its support for the introduction of competition legislation, recognizing that this is likely to result in lower costs of inputs, less costly intellectual property rights, or better access to the facilities controlled by natural monopolies (e.g. the telecommunications network and electricity transmission lines). UNCTAD seminars are helpful in pointing out these effects and thus contributing to the creation of a "competitive culture".

47. While an accurate measure of the overall impact of the programme is probably unattainable, there is sufficient evidence, from interviews in the developing countries and from comments provided on the questionnaires, to indicate that the programme is having a positive impact on competition both through its contribution to capacity-building and to the creation of a competitive culture.

48. Consider first those countries which have not yet passed laws on restrictive business practices or on consumer protection but which intend to do so in the near future. Interviews were held in, or questionnaires received from, seven countries in this category which had hosted a national seminar or advisory mission arranged by UNCTAD. Four of these countries volunteered the view that the seminar or mission had been effective in increasing community awareness of competition issues and was contributing to the creation of a competitive culture. The remaining three countries did not offer a view on this point.

49. Secondly, among the countries assisted by UNCTAD which already have competition and consumer protection legislation in place, at least nine have progressed to the stage where a competition authority has been established, capable of the effective implementation of up-to-date laws on restrictive business practices and consumer protection. As mentioned in paragraph 44 above, this provides a strong indication that, in those countries, technical assistance is having the desired impact of encouraging competition and thereby fostering economic development.

50. The potential impact of UNCTAD technical assistance in creating a competitive environment in a developing country does not come to an end with the establishment of an effective local competition authority. Assistance with further training of competition officials is likely to be required. Revisions to the legislation may be needed to keep up to date with changing business practices and developments in economic thinking. In recent years, UNCTAD has offered advice to countries such as Pakistan and Tunisia on necessary revisions to their competition laws. Such advice is more likely to gain government acceptance and have a favourable impact on competition when a local competition authority is there to act as an advocate for change.

D. Some lessons of experience

51. Although the programme has helped to build capacity in developing countries, there have been some disappointments. Arrangements made by UNCTAD for personnel from the developing country to work for a period in an established competition authority abroad have not always produced the desired results. This was attributed to a number of factors: some of those nominated were deficient in the necessary language skills, particularly in reading legal documents; some lacked a real commitment to the work; and some were moved to other posts (not involving competition issues) shortly after returning to their home country.

52. From the point of view of the host competition authority there are opportunity costs in such arrangements because of the need to supervise the work of the visitor and to explain the issues involved in the cases under consideration. In general, it was felt that the contribution to capacity-building was not commensurate with the costs involved.

53. Another lesson from experience is that effective implementation of competition and consumer protection laws is usually more difficult to achieve than the initial steps of gaining acceptance for the principle that such legislation is needed and then drafting the relevant bills for parliamentary approval. In some cases up to 10 years has elapsed between the first stage of the process and the establishment of the competition authority. Even then the competition authority may not be truly independent of government, as one would expect in a developed country. The implication of this is that UNCTAD must be prepared to assist individual developing countries over the long haul. It will usually require the services of a staff member or foreign expert who has

previously had direct involvement in a competition authority and is therefore familiar with the problems of implementing the law effectively.

54. Finally, experience indicates the great diversity in the needs of developing countries and in their understanding of the nature and effects of restrictive business practices. This means that national seminars and advisory missions need to be tailored to meet their individual requirements. Although it is useful to have a standard explanation of the principal features of "the model law", there also needs to be adequate opportunity for seminar participants to raise questions and discuss problems which may be unique to their situation.

E. The quality of material

1. Papers and publications

55. Officials in developing countries indicated that the material distributed at seminars organized by UNCTAD was useful for their purposes and of high standard.

56. Opinions were sought also from experts in restrictive business practices in some developed countries and international organizations regarding the quality of the analytical studies prepared by the UNCTAD secretariat and the commentaries on the model law, which are revised periodically.

57. The general opinion from this peer review was that the quality of such material had improved considerably over the past few years and was now comparable with that of similar studies prepared by the World Bank or OECD. However, it was pointed out that UNCTAD was employing cheaper printing methods and dispensing with covers for such publications, so that the appearance of the documents was inferior to that of the publications put out by these other organizations. It was suggested that this might lead to perceptions, however erroneous, that the UNCTAD documents were of less value.

2. The database and information available on the Internet

58. The Intergovernmental Group of Experts on competition law and policy has for some time been encouraging the UNCTAD secretariat to make more documents available on the Internet. Some progress has been made, with updated versions of the Directory of Competition Authorities and the Handbook on Competition Legislation now available in that form. However, several competition experts consulted in the course of this evaluation commented that more should be done to broaden the range of material available on the Internet and to ensure that it was updated frequently.

59. In particular, it was suggested that the following should be considered for inclusion : commonly asked questions and answers relating to restrictive business practices; selected case studies; lists of publications; major competition policy statements issued in developed and developing countries; and summaries of existing competition and consumer protection legislation. These are useful suggestions which should be explored further. If implemented, they would enhance the value of the services provided by UNCTAD at a relatively modest cost.

F. Relationship of the programme to other programmes

60. Several international organizations and many individual countries are currently providing technical assistance on competition law and policy to developing countries or countries in transition. Moreover, it is not uncommon for individual recipient countries to obtain such assistance from more than one source. This gives rise to concern in some quarters that there could be duplication of effort among the donors and a consequent waste of resources.

61. While this is a legitimate concern, the extent of the problem should not be exaggerated. For the most part, donor countries and organizations focus on particular geographical regions, limiting the likelihood of overlapping efforts. It is true that the countries of Eastern Europe and the Baltic States have captured the attention of a number of different donors in recent years, including, for example, the European Commission, Sweden, Finland and the United States. But this is partly the result of special circumstances, with several countries in that region seeking membership in the European Union.

62. In recent years, the geographical focus of UNCTAD's activities on competition law and policy has been on Africa, Asia and Latin America. Those interviewed in the course of this evaluation felt that in these regions, but particularly in Africa, UNCTAD had a comparative advantage in providing technical assistance, relative to such other bodies as the World Bank or OECD. Its comparative advantage derived from its previous work in the region, the standing of UNCTAD among developing countries, and the perception that the advice and assistance provided was of the highest quality.

63. It should also be recognized that there has been a good deal of cooperation in this area between UNCTAD, the World Bank and the World Trade Organization (WTO). Symposiums on competition policy and its impact on economic development and international trade have been arranged jointly by all three bodies. Two such joint symposiums were held in 1997-1998 and a third is planned for 1999-2000. These provide a useful supplement to the training provided through national seminars and national advisory missions, which are the centrepiece of UNCTAD's programme of technical cooperation activities.

64. Close cooperation between UNCTAD and the WTO on competition law and policy and its relationship to trade seems certain to continue, given the recent Singapore Ministerial Declaration which, among other things, urged such cooperation. It is also noteworthy that the Intergovernmental Group of Experts on Competition Law and Policy at its July 1998 meeting invited the Secretary-General of UNCTAD to continue cooperation with the WTO and other organizations working in the area of competition law and policy.

65. While these actions will go a long way towards eliminating the risk of duplication of effort in the provision of technical assistance in this area, some actual or potential donors would evidently like further assurance on this score before committing themselves to support UNCTAD initiatives.

66. It would not be sensible to draw strict demarcation lines, so that each country and multilateral organization has an exclusive right to provide technical assistance to only certain specified developing countries. However, it could be wise to prevail on Governments and multilateral organizations to exchange information on a regular basis, indicating what initiatives they are proposing and how and where they are allocating funds for such technical assistance. This alone would help to eliminate possible duplication of effort.

67. Within UNCTAD itself, there are evidently important links between the work of the Competition Law and Policy and Consumer Protection Section and the work of other sections dealing with trade, investment, innovation and the diffusion of technology, intellectual property rights and enterprise development. Restrictive business practices can retard trade, economic development, business investment, innovation, and the growth of small and medium-sized enterprises. Yet social welfare may not benefit from the implementation of laws designed to strengthen competition, unless there is also effective consumer protection legislation outlawing misleading advertising, the marketing of unsafe goods, pyramid selling and the like.

68. The importance of competition and consumer protection policies was emphasized at UNCTAD IX, held at Midrand, South Africa, in May 1995. The Midrand Declaration contained the following remarks: "There is a growing realization that anti-competitive practices can have a negative influence on trade opportunities arising from trade concessions and obligations. The challenge faced by developed and developing countries alike is to introduce effective national policies in this respect."

69. In order for UNCTAD to make a strong and effective contribution to the process of economic development and enhanced social welfare in the developing countries, it is essential that there be an integrated approach to policy development, recognizing the interrelationships between

competition policy and other facets of economic and social policy. This will require continued close collaboration between the relevant sections of the organization.

70. Moreover, the allocation of resources within UNCTAD should also reflect the increased importance now attached to competition policy by most developing countries.

G. Sustainability

71. The present UNCTAD team of four involved with technical cooperation on competition law and policy has the skills and experience to carry through the programme effectively, calling upon the services of foreign experts from both developed and developing countries, as required.

72. However, the existing resources, human and financial, are being stretched to accommodate the present level of activity on technical cooperation, given the other work for which the team members are responsible. This has some undesirable consequences. One is that the number of developing countries whose requests for technical assistance cannot be met is tending to increase over time. Secondly, too little time is available for the preparation of material in advance of an overseas mission and it is not always possible to provide copies of the papers delivered at national seminars. Thirdly, it is difficult for the team to find the time to expand the range of useful material available on the Internet and to keep this material up to date. Time pressures may also explain why some donor countries say they have not always received sufficient notice to enable them to meet UNCTAD requests for experts or financial resources for a particular project.

73. A further impending problem relates to the changing pattern of demand for technical assistance on competition law and policy. In the past, most developing countries that approached UNCTAD were interested in having an introductory seminar explaining the nature and effects of restrictive business practices. Many have now progressed beyond that stage and are seeking advisory missions to assist with the drafting of competition laws and the implementation of such legislation. Missions of this kind are more intensive in the use of resources than introductory seminars. They are less standardized and usually require that the expert(s) spend more time in the country concerned. The implication is that in the future more resources will be needed to satisfy requests from the same number of countries as in the past

74. As noted above (paras. 37 and 42), most developing countries have also indicated that the training of investigators and competition authority members is one of their highest priorities for technical assistance. But it is not feasible for the present team to provide this training themselves in addition to their other responsibilities. If it was decided to establish a training centre in Africa, for example (a preferred option for many African countries), it would be necessary to employ local

staff and visiting experts on a continuing basis. This would be feasible only if it could be financed from internal UNCTAD resources or if a donor country could be persuaded to enter into a long-term commitment to finance the project.

75. Against this background, what steps should be taken to ensure that the programme remains effective and sustainable over the next few years? One option might be to refuse requests for assistance from some developing countries which are now moving to implement competition legislation. This is probably the least desirable option. It would mean that technical assistance was denied at the stage where it was likely to have the most impact on competition and capacity-building. The benefits of an earlier introductory seminar might well be lost because of the lack of adequate follow-up. The replies to the questionnaire indicate that several developing countries are already expressing concern about that lack.

76. A second option would be to cut back on the number of introductory seminars offered each year to countries not previously in receipt of UNCTAD technical assistance. This has the obvious disadvantage that it could effectively delay the introduction of competition law and the creation of a competitive culture in some developing countries. The problem would probably be most acute in Africa, Latin America and parts of Asia since UNCTAD has special knowledge of local conditions in those regions that is not matched by other organizations providing technical assistance on competition law and policy.

77. A third option would be to limit the national introductory seminars held each year to about the present number (effectively precluding any extension of such activity to Eastern European countries or the Russian Federation), slightly reducing the number of regional seminars each year and seeking to accommodate almost all requests for assistance in implementing competition legislation. However, this level of activity could probably not be sustained without some additional resources from external and internal sources.

78. However, leaving aside for the moment the important issue of training, which is the subject of a specific recommendation below, the additional resource requirements would be quite small, making this a feasible and attractive option compared with the alternatives.

79. The additional internal resources would be needed to:

(a) Extend the data and information base on the Internet, and update it regularly;

(b) Write up case studies of particular relevance to developing countries to be circulated and used as the basis for discussion at seminars and workshops;

(c) Ensure that the outlines of the papers presented at national seminars are distributed, preferably in advance;

(d) Prepare detailed project proposals inviting external support for forthcoming UNCTAD activities (in the replies to the questionnaire used in the present evaluation several donor countries indicated they would be likely to provide more financial or other assistance to the programme if certain improvements in programme delivery were instituted and more advance notice provided);

(e) Allow members of the UNCTAD secretariat with specialized knowledge of competition law and policy to spend longer periods on advisory missions where this is necessary to ensure that the legislation will be implemented effectively.

It is estimated that these objectives could be achieved if the human resources available to the team were increased by three man-months per year.

H. Overall evaluation

80. In general, the UNCTAD programme on competition law and policy has performed well in recent years, in the face of an increasing number of requests for assistance from developing countries and countries in transition. The number of overseas missions carried out annually has risen and has now stabilized well above the levels of six years ago. With a few exceptions, the activities performed have fully met the expectations of the recipient countries. The publication of analytical studies, information papers and commentaries on the model law has continued, and most readers consider that the quality has improved. Cooperation with other organizations involved in competition policy has been stepped up and joint seminars and conferences have been arranged with the WTO, the World Bank and the German Foundation for International Development (DSE). Savings in cost and time have been achieved by arranging back-to-back seminars in countries in close proximity to one another and employing foreign experts from various parts of the world, rather than relying exclusively on European-based experts.

81. These improvements in performance were facilitated by increased funding from external sources. To maintain the current level of external funding or even increase it, donor countries and organizations will have to be satisfied that appropriate criteria are being used to select the projects to be undertaken; that there is minimal risk of duplication of effort by the various agencies providing technical assistance in this area; and that, as a result of UNCTAD cooperation, new competition laws are not only being drafted but are being implemented effectively.

82. Some weaknesses in programme delivery have come to light in the course of the evaluation. Too little time is made available at the introductory seminars for questions from the audience and for small-group discussions of case studies. Copies of papers or lecture notes are not always circulated. Foreign experts giving presentations at national seminars could be better briefed on the local economy, the institutional framework and the level of understanding of restrictive business practices by local officials.

83. It is also suggested that time planning could be improved. In particular, prospective donors need to be given more notice, so that the projects they are being asked to support can be given priority. The competition authorities in recipient countries should be given more advance notice of regional and subregional seminars to which they are invited.

84. Against this background of perceived strengths and weaknesses in the programme, the recommendations arising from this evaluation are set out below.

III. RECOMMENDATIONS

85. **Priority areas for technical assistance.** As more developing countries pass laws on competition and consumer protection and face the problem of implementing those laws effectively, their priorities for technical assistance are changing. The UNCTAD programme should reflect these changing priorities, as well as the lessons that can be learned from almost 20 years of experience with the Set. This means that increasing emphasis has to be placed on advising how best to establish an independent competition authority, assistance with the training of the authority's members and staff, and holding national seminars at which case studies and problems of implementing the law can be examined in depth.

86. The organization of national seminars aimed at developing countries which have not yet passed competition or consumer protection laws should continue to occupy a prominent place in the programme. These seminars can prove to be a valuable first step towards a national consensus on the need for competition legislation and the creation of a competitive culture.

87. Relatively less emphasis should be placed on large-scale regional seminars, except where they can be run in conjunction with small group workshops. It is difficult in the large seminars to focus on the specific practical problems of individual developing countries and to cater adequately for the varying interests, backgrounds and qualifications of the audience.

88. As indicated above (paras. 51 and 52), the arrangements made to allow personnel from developing countries to gain hands-on experience by working for a period in an established

competition authority have not always yielded the anticipated benefits. This type of arrangement should be given low priority, at least until possible alternative training opportunities have been fully investigated.

89. **Geographical spread of activities.** The programme already extends over a wide range of developing countries, mainly in Africa, Asia and Latin America. Further extension to other regions, such as Eastern Europe, the Baltic States and the Russian Federation, is not warranted at this stage, given the available resources; the need to provide follow-up assistance to countries that have taken the first steps towards introducing competition legislation; and the fact that other organizations are already providing technical assistance to countries in those regions.

90. **Criteria used for the selection of projects.** The criteria used to select countries and projects for assistance should be made more transparent. Donor countries may be more likely to provide financial and other resources if they believe the criteria are appropriate.

91. **Relationships with other related programmes.** The recent conferences on competition policy and its relationship to trade and development, organized jointly by the WTO, the World Bank and UNCTAD, have been helpful in increasing public awareness of the ways in which these arms of economic policy interact. Similar conferences should be held in the future. Moreover, the three organizations should inform one another regularly about the technical assistance they are proposing to provide to individual developing countries so that duplication of effort can be minimized.

92. Within UNCTAD itself, competition policy should be seen as an integral part of overall economic and social policy requiring close working links between the staff involved in the various policy-advising areas. Consistent policies must be designed with the object of maximizing the economic and social welfare of the individual developing countries. The interaction between policy measures must be recognized if this objective is to be achieved. For example, the adoption of policies aimed at fostering competition may act as an encouragement to FDI in the country concerned. At the same time, some forms of investment incentive, such as tariffs or non-tariff barriers, will tend to inhibit import competition and may eventually retard economic development.

93. **Training.** Given the high priority that the developing countries attach to training for the staff and members of their competition authorities, options for providing such training should be explored in detail and a report presented to the Intergovernmental Group of Experts on Competition Law and Policy. The feasibility of establishing a regional training centre for the African countries should be examined as one of the options.

94. **Material on the Internet.** Government officials and competition authority staff in developing countries would benefit if the range of data and other material on competition and consumer protection issues on the UNCTAD website was extended and updated. Frequently asked questions and answers, selected case studies, commentaries on the model law and summaries of relevant legislation should be considered for inclusion on the Internet.

95. **Reports on national seminars.** Summary reports of regional seminars are usually published. They provide a useful guide to the latest thinking on competition law and policy. While it may not be justified to publish reports on each national seminar, mainly because of the repetition likely to be involved, participants should be provided with an outline of the presentations by the principal speakers, preferably in advance of the seminar.

96. **Advance notice of seminars.** Invitations to participate in regional or subregional seminars are usually sent through normal diplomatic channels. It is apparent that they are often not received in good time by the relevant ministry or competition authority. To avoid this difficulty such invitations should be sent directly to the authority, with a copy sent to the country's representative in Geneva.

97. **The timing of requests for resources.** Requests to prospective donor countries for financial resources, training facilities or the services of experts on particular projects should be made well in advance. Donors indicate that the chances of being able to provide such assistance to UNCTAD are diminished when, as sometimes happens, too little notice is given.

98. **Requirements for internal staff.** To ensure that the programme is effective and sustainable in the face of increasing demands for technical assistance, a small increase in internal resources, equivalent to three man-months per year, will be needed for the specific purposes outlined in paragraph 79 above.